

Direct Payments for Adults – Policy

Information and guidance for people and practitioners

Direct Payment



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Contacts

CareDirect: **0845 1551 007**

The Direct Payments Team: **01392 383126**

or email: direct.payments@devon.gov.uk

Introduction

This document sets out our policy for Direct Payments for adults and provides guidance about using Direct Payments to provide and manage support arrangements.

Direct Payments offers people the opportunity to receive money to buy the social care they need to achieve the outcomes on their Support Plan.

They give people increased autonomy, inclusion, choice and flexibility to help them live in their own homes, be fully involved in family and community life, and take part in work, education and leisure.

Many people using Direct Payments have experienced the benefits of increased opportunities for independence, social inclusion and enhanced self-esteem.

Direct Payments must be offered to all eligible people, but should not be forced on them.

To access Direct Payments, eligible people need an assessment of their care needs and a Support Plan showing the outcomes to be achieved from the applicable service area.

Guidance for the assessment process is in the ***Adult Social Care Personal Budgets Policy January 2011***.

Legal context and regulations

Direct Payments were introduced for adults through ***The Community Care (Direct Payments) Act 1996***. They are now governed through ***The Health and Social Care Act 2001*** and ***The Children Act 1989***.

The relevant regulations are *The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009*.

The broad effect of the 2001 Act and the regulations, was to extend Direct Payments to include people who lack the capacity within the meaning of the Mental Capacity Act 2005 to consent to the making of Direct Payments.

It also removed the exclusions which applied to people subject to various provisions of mental health legislation, particularly the Mental Health Act 1983, and to provisions of criminal justice legislation relating to mental disorder.

The Department of Health has published *Guidance on Direct Payments for community care, services for carers and children's services: England 2009: Department of Health - Publications*

What are Direct Payments?

Direct Payments are a way of using a **Personal Budget**. If a service user is eligible to receive social care services, the choice of Direct Payments gives them money to arrange and purchase their own services to meet their social care needs, instead of Devon County Council arranging services for them.

Direct Payments provide people with the freedom to design services around their specific circumstances and needs. It also gives them the flexibility to look at options which may include employment, education and leisure activities, as well as personal assistance, to meet assessed needs.

Day to day control of the money and support package passes to the person who has the strongest incentive to make sure that it is properly spent on the care and support required, and who is best placed to judge how to use available resources to achieve the outcomes identified in the Support Plan.

This person may be the service user, or someone nominated to receive the Direct Payments on their behalf.

A practitioner, for example a member of the Assessment and Review or

Complex Care Team, will talk to the service user about Direct Payments during an assessment or during a review of care.

Direct Payments are not a Social Security benefit and do not affect any Social Security benefits that people may receive.

Service users can also choose to have a combination of Direct Payments and a directly provided service.

Why choose Direct Payments?

Direct Payments do not have to be used in the same way as if support was being provided directly by Devon County Council. They are intended to give people maximum choice and control over how their eligible needs are met and outcomes are achieved.

This means that people can choose to employ their own **Personal Assistant** so that they control what, when and how tasks will be done, and who will carry them out.

If a service user chooses to employ a personal assistant, the Independent Living Advisers in the Direct Payments Team can provide advice and support about employment responsibilities. The service user may choose instead to contact an agency and pay for them to send staff to support them at times that suit them.

Service users can also choose to have a mixed package of care, which includes some of their support provided by the Council and some by Direct Payments.

Service users should consider the advantages and disadvantages of each choice before deciding which one will suit them best.

What can Direct Payments be used for?

Direct Payments can be used to buy relevant services or equipment, to meet the needs identified in the service user's Support Plan.

Direct Payments may be used to:

- recruit and employ personal assistants
- purchase personal assistance from an agency
- purchase residential respite care or a sitting service
- participate in activities, like outings or exercise classes, if they contribute to meeting the outcomes agreed in the Support Plan
- pay for membership of a club or gym for example as an alternative to attending a day centre, or to give someone a break from their role as a carer, if these are identified needs
- support access to community activities, college courses, and evening classes
- try out independent living
- purchase support to maintain contact with family members
- purchase support to learn new skills
- purchase equipment;
- cover the expenses for people to take them out.

These are only examples. Service users may use their Direct Payments to meet their social care needs in many different ways to help them remain as independent as possible, as long it is approved by Devon County Council and is safe, legal and healthy.

If the chosen activity is more expensive, more money cannot be paid. Instead, the amount can be topped up from a person's own money or payments can be saved over time to plan for these events. As long as the overall payments are used to achieve the outcomes agreed in the support plan, the actual pattern of support doesn't need to be predetermined.

Direct Payments **cannot** be used to:

- relieve Devon County Council of its statutory responsibilities towards people who are perceived as troublesome or difficult
- purchase a service that is directly provided by Devon County Council
- purchase any services or equipment which Devon County Council is not responsible for, such as services that the NHS should provide, or equipment that is not specified in the Support Plan
- purchase items or services that are unrelated to the identified care needs or agreed outcomes
- pay for health-related services such as dentist, chiropody or physiotherapy appointments
- pay household bills, such as food and utility bills
- cover housing services, such as rent payments
- paying non-statutory liabilities, such as tips, bonuses or ex gratia payments
- pay for anything which is illegal
- pay for gambling - including lottery, bingo and raffle tickets
- pay for alcohol or cigarettes
- pay for permanent residential accommodation – although they can be used for short term (respite) stays in residential care.

The Regulations state that a family member or partner living in the same household cannot be used to provide the services, including personal assistance, unless the Devon County Council is satisfied that it is necessary to do so to meet the needs of the assessed person. These are considered **exceptional circumstances**, which must be agreed by the Council in writing. Family members living elsewhere are permitted to be employed through Direct Payments.

Exceptional circumstances

Government guidance states that Devon County Council may agree to the employment of a family member or partner living in the same household as the Direct Payment recipient in exceptional circumstances.

Care should be taken before agreeing such arrangements, which could be open to abuse. The Council needs to be satisfied that:

- there are genuine, overwhelming reasons why the family member needs to be employed
- there is a contractual arrangement for care-giving with the family member
- there is no substantial risk of financial abuse.

The following criteria may be accepted as exceptional circumstances as long as adequate evidence can be produced to prove this.

A family member may be employed when:

- for reasons of ethnicity or religious belief specific limitations apply to who may acceptably be employed to deliver the care, and there is no likelihood of being able to recruit an appropriate carer locally
- delivery of personal care by a third party would cause genuine distress to the service user
- there is a need for live-in care, but no appropriate accommodation available
- care needs are intermittent and unpredictable, and recruitment or use of an agency to meet such needs would be impracticable
- substantial effort at recruitment has been unsuccessful due to exceptional local workforce pressures or geographic isolation
- this is the only practical way of meeting the care needs during a temporary breakdown of other service arrangements.

Who can have Direct Payments?

The vast majority of people receiving social care services have a right to Direct Payments. These are:

- adults who have been assessed as having eligible needs for community care services
- disabled people aged 16 or over, including those with short as well as long term needs.

- a **Suitable Person*** as defined where a person has eligible needs and has been assessed as lacking the capacity to consent to the receipt of Direct Payments.

Legally, staff should offer Direct Payments to people eligible to receive them at every assessment and review. The service user can receive the Direct Payments themselves or nominate a third party to help them manage the payments.

There are only very limited circumstances when Direct Payments would not be offered. The exceptions are:

- offenders on a community order or suspended sentence
- offenders on a community rehabilitation order
- offenders released from prison on licence
- people with drug or alcohol dependency who are subject to compulsory treatment orders.
- people subject to mental health legislation.

* For more information on who may be a Suitable Person, please see the section on page 12 entitled, 'Appointing a Suitable Person'.

People subject to mental health legislation

In most cases people subject to mental health legislation will have exactly the same rights to Direct Payments as anyone else.

However, in a few cases we will have a power (but not a duty) to make Direct Payments to 'restricted patients' who are conditionally discharged under the **Mental Health Act 1983**. Conditionally discharged restricted patients are offenders who have been detained in hospital under the 1983 Act and who remain liable to recall to hospital if necessary for their own health and safety or the protection of others.

The Council has a power, rather than a duty, to make Direct Payments for services the service user is under an obligation to accept as a result of any of the provisions of the 1983 Act, the ***Criminal Procedure (Insanity) Act 1964***, the ***Criminal Justice Act 1991*** and the ***Criminal Justice Act 2003***, the ***Powers of Criminal Courts (Sentencing) Act 2000*** and similar Scottish legislation.

For example, if it is a condition of a person's community treatment order under the ***Mental Health Act 1983*** that they accept a particular type of community care service then we would have a power, but not a duty, to make Direct Payments for that service - provided all the other criteria for making Direct Payments are met.

Who has capacity to consent to Direct Payments?

Under the ***Mental Capacity Act 2005***, we must assume that a person aged 16 or over has the capacity to make a decision, unless it can be established that they lack such capacity.

Mental Capacity Act 2005

Capacity is issue specific. The Act states that a person is unable to make a decision if they are unable to:

- understand the information relevant to the decision
- retain that information
- use or weigh that information as part of the process of making the decision
- **or** communicate their decision – whether by talking, using sign language or any other means.

The Council has a duty to offer Direct Payments to a person with the capacity to consent as long as they appear to be able to manage them alone or with support.

Where the service user doesn't have the capacity to consent to Direct Payments, the payments can only be made where there is an appointed Suitable Person who is willing to manage the payments on their behalf.

If the care manager feels it is appropriate for a third party to receive the Direct Payments on behalf of the service user, the third party must open a separate dedicated bank account to receive the Direct Payments and must adhere to the conditions set out in the Direct Payments Agreement. This can only be done after a full assessment of the person's capacity to decide about the use of Direct Payments has been made and documented. We must ensure that any decision is made in the best interests of the service user.

Where the service user has capacity to consent but wants someone else to receive Direct Payments for them, the Council can make the payment to a third party (nominee). This may be a family member, friend or attorney.

The person who receives the care and support must have overall control over how the support is delivered **not** the third party. When a service user has the capacity to consent they must keep overall control of any decisions made and be responsible for the way the Direct Payments are used.

Consent and managing Direct Payments

We should not confuse somebody having the capability to manage Direct Payments, with whether they have mental capacity within the meaning of the 2005 Act to consent to such payments being made. It does not necessarily follow that because a person has capacity to consent to Direct Payments that they are also capable of managing them.

If the person consents to Direct Payments the Council has a duty, or in some cases a power, to make Direct Payments. This is as long as we are not prevented from doing so for other reasons specified in the Regulations; for example if we are not satisfied that the person's needs can be met using Direct Payments. We must be satisfied that the person is capable of managing Direct Payments either alone or with available help.

Appointing a Suitable Person

An appointed Suitable Person means a person appointed to receive and manage Direct Payments on behalf of a service user who lacks capacity to consent to the Direct Payments.

The Suitable Person may, but not always, have been given a lasting power of attorney or have been appointed by the Court of Protection as a deputy under the ***Mental Capacity Act 2005***. In most cases, the Suitable Person may be a family member or close friend already involved in providing care for the service user.

The Suitable Person must be capable of managing Direct Payments (either on their own or with available help), and Council staff must be satisfied that there is an understanding of what is involved in managing Direct Payments.

An appointed Suitable Person must:

- be willing to take on the responsibility
- be aware they are accountable to Devon County Council for the way the money is spent
- take on all responsibilities that Direct Payments carry with them; for example, they will take on responsibility for obtaining the support which may involve legal responsibilities, such as becoming an employer
- not secure services from a spouse, civil partner or partner of the service user or a close relative, spouse, partner who resides in the same household of the service user without discussing with and seeking the agreement of the Council . It may be considered in exceptional circumstances where the Council is satisfied that it is in the best interests of the service user. They must first ask the Council if this can be done.
- provide information about the spending of the Direct Payments for monitoring purposes. Guidance will be given on how to keep and provide the correct records for monitoring. They must adhere to this guidance otherwise Direct Payments may be suspended or discontinued.

Who can manage Direct Payments?

If the service user, or the Suitable Person, meet all conditions specified in the Regulations and appear to be able to manage Direct Payments, the Council has a duty or a power, as appropriate, to make Direct Payments.

If there are concerns about the ability to manage Direct Payments we will discuss this with the service user before making a decision. Their views will be taken into account and there will be an opportunity to discuss the help that may be available. We cannot make Direct Payments if we are not satisfied that the potential beneficiary is capable of managing the payments by themselves or with available assistance. In appropriate circumstances we will also discuss the reasons for coming to this conclusion with family or friends.

If the service user doesn't agree with the Council's judgement, they may want access to an advocacy service to ensure that their arguments are properly considered. They can also access the Council's complaints procedures.

We will provide support and information about receiving and managing Direct Payments early in the process. The professional will support the service user with this so that they can make an informed decision. They must understand what is involved when they agree to receive and manage Direct Payments.

Managing Direct Payments is not just about handling money. It also involves people making their own arrangements either alone or with support. Managing their own staff or contacting the agency they use directly. The person receiving Direct Payments is accountable to the Council for the way the Direct Payments are spent. Independent Living Advisers in the Direct Payments Team can provide people with advice, information and support with these responsibilities.

If a service user or Suitable Person thinks they may not be able to manage Direct Payments in the future, they are encouraged to discuss any concerns they may have with the practitioner. This will ensure that considerations are made about supporting them to manage Direct Payments in the long term. As long as a person is able to manage with appropriate assistance, their Direct Payments should continue.

Fluctuating capacity to manage Direct Payments

If a service user who previously lacked capacity regains capacity long term or on a permanent basis, we have a duty to stop Direct Payments to the Suitable Person and pay them to the service user if they wish to receive them. We should ensure that there is no gap in the provision of care.

If the Council is satisfied that regained capacity is only temporary, we can continue to make Direct Payments to the Suitable Person. However, the Suitable Person must allow the service user to manage their Direct Payments during any time that they regain capacity to consent.

Where service users have fluctuating conditions, statements of wishes and preferences should be used to help with support and any concerns they may have about their ongoing management of Direct Payments during these times. We will review Direct Payments to ensure that the service user has as much control as possible over decisions that affect them and that any risks are identified and addressed.

How much Direct Payment will be paid?

For more information refer to the Personal Budgets Policy at www.devon.gov.uk/policy_for_personal_budgets_final_jan2011.pdf

The Council must pay an amount that is enough for someone to have access to a service which will adequately meet their needs and represents best value.

The amount must be equivalent to the Council's estimate of the reasonable cost of buying the service concerned, subject to any contribution the service user may have to pay.

A service user will receive Direct Payments based on the amount agreed in their support plan to meet the outcomes we agreed with them. The Council is not obliged to fund any associated costs if they exceed its estimate of the reasonable cost of securing the service, and if a similar service could be

secured more cost-effectively in another way.

the Council may consider increasing the Direct Payment amount to enable a service user to arrange support in a particular way if we are satisfied that the benefits outweigh the costs and represents best value, for example; to enable someone to employ a specialised worker.

The Council will write to service users and tell them:

- how much they will receive in Direct Payments
- how much their contribution will be
- what date their Direct Payments will start from
- when the first payment will be paid to their Direct Payments bank account
- the payment made will net of the service user's contribution.

How will Direct Payments be paid?

To enable service user's to receive Direct Payments they will need to open a separate bank account which is only used to pay Direct Payments money in to and out of.

The account should have a chequebook and the service user must receive regular statements to manage the payments. The Council will ask to see account statements, as part of the monitoring process.

Payments will be made four weeks in advance and a schedule of payments will be sent to people when they first start using Direct Payments.

An example schedule is available here http://staff.devon.gov.uk/acspay_direct_payments11-12.pdf

The Council will write to service users telling them how much in Direct Payments they will receive and how much their contribution will be. This will enable people to decide that the amount of Direct Payments offered is sufficient to purchase the support. The Council will tell people what date their Direct Payments will start and when the first payment will be paid to their

Direct Payment bank account. The payment will be made net of their contribution.

The Direct Payments Team can provide a letter for the bank on a service user's behalf, which explains why they are asking to open an account. If they experience difficulties opening an account, they are advised to ask the Direct Payments team for advice, and encouraged not to give up at this point.

The bank account should be in the name of the person receiving Direct Payments. If the service user has access to the Independent Living Fund, they can also pay this into their Direct Payments account.

If a person has capacity to consent, they may ask a third party to help them with managing Direct Payments. In such cases, the payments can be made to a third party on their behalf. They will be able to manage the money day to day as delegated by the service user. The service user will still be responsible and must have control over how the support is delivered.

The third party may also have support from the Independent Living Advisers. If the bank account is held in the name of the third party, we would request that the account states where possible that it is a Direct Payments care account for the service user.

When someone is appointed as a Suitable Person for a person who lacks capacity to consent, the bank account must be in their name.

The Council will write to the service user to offer the Direct Payment and will send:

- a Direct Payments Agreement (SS20)
- a bank details form (A101).

The completed forms must be sent to The Direct Payments Team and Direct Payments cannot be paid until we have received them. If help is needed, please ring the team on **01392 383126**.

Alternative ways of receiving Direct Payments

The Council recognises that some people may need alternatives to the traditional bank account to receive Direct Payments. One option being explored is payment cards. These would have the advantage of eliminating the need to open a bank account and we can monitor the transactions without people having to submit bank statements and written returns.

Third party managed accounts

It may be that the service user has problems accessing a bank account, or there are concerns about the financial management of Direct Payments. A third party managed account may be an option here, but should only be considered as a last resort.

The Direct Payments Team can advise about this option. If a service user would like to have a managed account and it is agreed this is the best way of managing Direct Payments for them, it must be agreed by a team manager or budget holder appropriate to them at Devon County Council. We will pay a set amount for this additional service for the individual.

The Direct Payments Agreement (SS20)

Direct Payments cannot start until the service user or Suitable Person signs the Direct Payments Agreement containing the conditions the Council consider are necessary for the payment.

The Agreement explains the role and responsibilities of the service user and the role and responsibilities of Devon County Council, and it is important that the service user understands the agreement before they sign it. If support is needed the Direct Payments Team can help.

When the service user wants to agree to the written offer of Direct Payments they must sign the agreement and return the specified documents to Devon

County Council. The Council will then process this to enable the person to receive Direct Payments.

There are three sections to complete on the agreement.

1. **Signature of recipient** - this section is for the person receiving the direct payment to sign if they are able to. This must be witnessed in the appropriate manner.
2. **Nominated agent (person who is assisting with managing Direct Payments)**. If the service user is unable to sign, the person who is assisting them to manage the Direct Payments must sign this section. If the service user can sign, the person who is assisting them must always complete this section as well. The Direct Payments Team will explain who should sign if the service user is not sure.
3. **Officer on behalf of Devon County Council** - the final section must be signed by the appropriate person once the service user has signed their section, and we receive all of the pages including the signature page, back from them.

Once signed the full document will be returned to the service user or the Suitable Person together with the remaining Direct Payments information.

Safeguarding, choice and risk

Support planning involves a person making informed decisions – including making decisions about risk. The Council will support a service user to minimise any risks and any potential consequences that may arise from the particular choices they may make. See **Appendix 2**.

When considering the offer of Direct Payments, service users may be unsure about the experience of being in control. Whether they are considering employing a personal assistant, hiring a self-employed assistant or an agency to provide services it is important that the service user is aware that there is

support available from the Direct Payments Team to help them. See what the team can help with on **page 20**.

The Council recognise the importance of regular reviews tailored to a person's specific needs, which will consider the level of risk a person may be exposed to. Reviews will be undertaken at least annually and in partnership, allowing for the fact that people may not get everything right first time and might want to change their minds and make adjustments to improve things.

Where problems arise, we will be prepared to consider the reasons for such problems. Rather than assuming that the risks to a person of receiving Direct Payments are too high, we will be prepared to work with the service user to identify changes which can enable them to continue to manage, perhaps with a greater level of assistance in the short or longer term. See **Appendix 2 and 3**.

Employing someone suitable

Although there is no obligation for service users to carry out Criminal Record Bureau (CRB) checks for personal assistants we do consider that these checks are needed to protect people. We strongly advise that people carry out a CRB check on carers they are thinking of employing as their personal assistants. Service users can arrange this with the Direct Payments Team who will be able to process the CRB check through the Council's own internal system.

There has to be a CRB check on an assistant if there are children in the household where they will be working. Devon County Council has a duty under The ***Protection of Children Act 1999*** to carry out checks.

If there is an approved Suitable Person for a service user who lacks capacity and they are a close relative, spouse, partner of a close friend or friend of the service user they are not obliged to obtain CRB checks for personal assistants they employ. If the Suitable Person is a corporation or unincorporated body then they must obtain a CRB for anyone they engage to provide services with Direct Payments. In this case the Suitable Person unknown to the service user will be a regulated activity provider. A Suitable Person who is a regulated activity provider, must ascertain that

anyone they employ to provide services is not barred from engaging in the regulated activity, when the vetting and barring scheme comes fully into force

When people employ their own staff Independent Living Advisers will support them to make sure that they are kept safe.

Independent Living Advisers can help with:

- Direct Payments arrangements
- job descriptions, advertising, liaising with care agencies and recruiting staff
- support in setting up and managing a Direct Payment, including any Independent Living Fund contributions
- identifying risks to the service user or personal assistants
- support in all aspects of employment legislation including paying wages, tax and national insurance liabilities, and employers liability insurance
- contingency arrangements
- Criminal Records Bureau checks
- any related issues to ensure the success of the support plan.

Using agencies to employ someone

Agencies providing personal care are required by law to be registered with the Care Quality Commission and service users receiving Direct Payments are encouraged to ask the agency for evidence of this.

We strongly recommend that service users only use a registered agency. If they are considering using an unregistered agency they must first discuss this with the practitioner as the Council may not agree to support paying Direct Payments in these circumstances. If a service user wishes to use an agency, we recommend that they ask if all the agency staff have had a CRB check and ask to talk to other people who already use the agency. They should also ask to see a copy of the agency's insurance and any references from people who have used their service.

It is the Direct Payment recipient's responsibility to arrange their services with the agency and to pay invoices when they receive them. Recipients can be

supported by Independent Living Advisers in the Direct Payments Team, when making arrangements with an agency.

If the service user is unhappy with an agency, they must contact the agency and discuss their concern. The agency should tell them how they can do this.

If the agency's rates increase the service user must let the Council know. It's important to make sure the service user understands that they are dealing directly with the agency, and we may not know about any change to the amount they charge for the service.

If the agency tells a service user that they can no longer provide care, the service user should contact the Council as soon as possible.

Employing a personal assistant

If a service user decides to use a personal assistant they can:

- use employed personal assistants and become an employer
- use a self-employed personal assistant.

Concern about becoming an employer should not be allowed to discourage service users who would otherwise be willing and able to manage Direct Payments. The service user should be aware of the responsibilities involved, but should be informed accurately, responsibly, constructively and supportively, so that they can make an informed choice

Many people offer their services as self-employed personal assistants. If a service user is considering using self-employed personal assistants, they must contact HM Revenue and Customs and speak with the local status officer. If a service user becomes an employer, they may incur additional costs. Independent Living Advisers can offer support with this.

Service users will receive an hourly amount to pay for their personal assistant, which includes the associated employment costs. For example the rate covers

unsociable hours, National Insurance contributions and statutory holiday pay. An Independent Living Adviser will help service users calculate how much they can pay their personal assistant per hour.

The Council will pay for all CRB checks and a specific amount towards:

- Employers Liability Insurance
- a third party managed account
- payroll services.

The Council will make Direct Payments in advance to give service users enough money to meet their needs, and give a four week contingency fund when personal assistants are employed.

Service users must let the Council know as soon as they have recruited their personal assistants, so that we can start making payments to them.

When the service user or the Suitable Person employs a personal assistant they become an **employer**. This means that they will hold sensitive information about the personal assistant which they cannot disclose without the personal assistant's permission under the Data Protection Act.

If the Council request information and the service user or nominated or Suitable Person is not sure whether they are legally able to share it, they can ask us for support to make sure they operate within the law.

Illegal working

Legislation which came into force in February 2008 means that an employer must make basic checks with every employee. Failure to do these document checks may result in a fine. Independent Living Advisers can provide advice, guidance and support with this. We recommend that if a potential employee is not permitted to work in the United Kingdom, the service user should not employ them.

There is a Home Office booklet called ***Prevention of Illegal Working*** which gives employers guidance on this. The booklet can be ordered by calling **0845 010 6677** or downloaded from www.ukba.homeoffice.gov.uk/sitecontent/documents/

employersandsponsors/preventingillegalworking

If the service user is using a self-employed personal assistant who is registered with HM Revenue and Customs, they may not be required to do this.

If the service user uses a registered domiciliary agency this law does not apply. We would always recommend that the service user asks the agency if they carry out these checks.

Health and safety

Service users have a legal duty for the personal assistants they employ. They have responsibility for health and safety and we encourage them to develop good practice to ensure risks are minimised. Independent Living Advisers will provide advice, support and information on how to adopt good health and safety practice. See **Appendix 2**.

Where safeguarding issues are raised, our Safeguarding Policy should be followed www.devon.gov.uk/adult-protection

Generally we will avoid laying down health and safety policies for individual service users, as they must accept that they have a responsibility for their own health and safety, including the assessment and management of risk. They will be encouraged to develop strategies on lifting and handling and other tasks, both in the home and outside it where lifting equipment may not be available.

As part of the process of supporting informed choice, we will take appropriate steps to satisfy ourselves that service users are aware of the health and safety issues that affect them as individuals, anyone they employ, and anyone else affected by the manner in which their support is delivered.

The Health and Safety Executive has published guidance on health and safety for employers and employees entitled **Homeworking**. This can be downloaded from www.hse.gov.uk/pubns/indg226.pdf See also Section 1(3) of the **Employment Rights Act 1996**.

The service user's financial contribution

The ***Devon County Council Charging Policy for Non-Residential Care Services (Supporting Personal Budgets for Social Care May 2011)*** is available at: http://staff.devon.gov.uk/devon_acs_non-residential_charging_policy_may_2011.pdf

The Fairer Charging Financial Assessment is applied to all service users who receive a service from Devon County Council, whether it is one of our usual services or ongoing Direct Payments.

The service user will not have a financial assessment if they:

- receive Income Support or Pension Guarantee Credit but do not receive Attendance Allowance (AA) or Disability Living Allowance (DLA)
- receive support from our Social Care Reablement service to help them
- are home from hospital or to prevent an admission into residential care
- are receiving services under S117 of the Mental Health Act 2007
- receive equipment or a minor adaptation to help with independent living.

The service user must inform the Council if their circumstances change.

The Council's fairer charging team will undertake a financial assessment if needed and tell the service user the result.

The service user or their Suitable Person should tell the Fairer Charging Team about any changes in their circumstances which may affect their calculation.

The service user, or their Suitable Person, must pay the contribution amount into their Direct Payments bank account every 28 days.

If the service user does not agree with their financial assessment, they can request an informal review by contacting the Fairer Charging Team or by asking their practitioner. A representative of their choice can also do this on their behalf.

Other payments and expenses

Contingency payments

Service users receiving a one off Direct Payment will not get a contingency payment. Service users receiving ongoing Direct Payments will receive a contingency payment with the first payment – this will be the same amount as one week's Direct Payment. This contingency payment should be kept in the Direct Payment account to use in emergency situations, such as:

- if an unpaid carer is ill and a replacement has to be employed
- to pay the first period of sickness pay for a personal assistant until it can be reclaimed from the Inland Revenue.

If some or all of the contingency payment has to be used, the service user should contact us and we will arrange for the amount spent to be replaced.

Travel expenses

It is reasonable to request expenses which will be incurred by the personal assistant whilst they assist the service user if this is part of the outcomes identified in the Support Plan. For example, costs incurred accompanying the service user on public transport or mileage for essential journeys. This amount must be entered on to the Money Tracker Form as an extra and detailed on the support plan.

Legitimate expenses

Reasonable costs arising from a Direct Payment can be met out of the Direct Payment or by requesting additional funds. Reasonable costs could include receipt books, photocopying, stamps, disposable gloves or aprons (if not supplied by health). It is permissible to pay someone to process payroll transactions, but this does not include members of the same household.

Occasionally requests are agreed for Direct Payments to be used to arrange more unusual services. For example, a Direct Payment might be used to provide a washing machine for a user so that their carer or paid assistant can ensure their personal care requirements are fulfilled. The rule is that such purchases must fulfil the outcomes expressed in the Support Plan. If practitioners have any concerns or doubts about what is appropriate they should contact the Direct Payments Team.

Financial monitoring

Direct Payments Team advisers will give service users advice on what information they should keep and how the monitoring process works.

Monitoring means that the Direct Payments account will be checked to make sure that:

- the Direct Payments have been used in the way that was agreed in the Support Plan
- the service user's contribution has been paid into the Direct Payments account
- the service user has enough money to secure their services.

Monitoring will also alert us if people have not spent any of their Direct Payments.

We have a simple and easy to understand monitoring process and we do not ask service users to complete complex paperwork. They will be supported at the beginning of the process by the Direct Payments Team, to ensure they understand what they need to do.

It is a condition of the Direct Payments Agreement (SS20), that if the monitoring arrangements are not kept to, then Direct Payments may be suspended or stopped.

If service users have more than seven weeks accumulated Direct Payments in their account, we can ask that they pay back any surplus money. This is normally done after a service user's monitoring review, unless the Finance Team already knows the reason for the additional funds in the account. If people are saving their Direct Payments to help them achieve an agreed outcome they should let us know about this.

The role of the finance representative

The finance representative will write and tell service users when their monitoring reviews will take place and what information they will need to provide.

When the finance representative receives the bank statements and Money Tracker Form they will check that:

- the Direct Payments are being used to meet the outcomes agreed in the Support Plan
- the service user is receiving the correct amount of Direct Payments
- the service user has paid their contribution into the account
- the balance of Direct Payments does not exceed the total for seven weeks unless an agreement has been made with the Council.

If the finance representative has any concerns they will write to the service user or they will refer the matter to an Independent Living Adviser who will make sure that the Direct Payments are working in the correct way.

The service user's role

The service user, or person receiving the Direct Payment's on their behalf, must:

- agree to the monitoring arrangements and to keeping good records
- send their bank statements and completed Money Tracker Forms to the finance representative when asked
- keep all the documents explained in the Direct Payments Agreement

(SS20) and as advised by the Direct Payments Team

- send any documents relating to their Direct Payments account which we, or any internal or external auditors, may occasionally request.

The person receiving the Direct Payments is responsible for the way they are used and for making sure that all appropriate actions are taken, for example deducting National Insurance when paying a personal assistant. The person managing the account may have help to do this, but they still have responsibility for it. We have the power to ask for any money to be repaid if it has not been spent to meet the agreed outcomes.

The service user, or person receiving the Direct Payment's on their behalf, should also:

- contact the Direct Payments Team if they need support to gather the information for their financial review
- tell the Direct Payments Team if they have any unspent money in the account, above the agreed limit
- pay back any money left in the account when the Direct Payments end
- not allow the Direct Payments account to become overdrawn, if the account balance is low and is in danger of going overdrawn they should contact the Direct Payments Team without delay.

Devon County Council does not pay any bank charges when a Direct Payments account becomes overdrawn without our consent.

Repayments

The Council understand that mistakes will happen and do allow for this. Should a mistake happen, we will discuss with the service user how best to manage their Direct Payments in the future.

The Council can ask people to repay some, or all, of their Direct Payments when:

- we are not satisfied that the Direct Payments have been used to secure services relating to the Support Plan
- any money is used for a different purpose or is not used at all
- the service user was receiving the money for a specific reason and it is no longer needed
- the service user receives funds from a third party, for example the Independent Living Fund (ILF), for the same purpose and for the same period that their Direct Payment was given.

Where a service user is receiving support from the ILF and we are considering asking them to pay some, or all of their Direct Payments back, we will look at the effect of doing this on the ILF funding. We will discuss this with the service user and ask for advice from the ILF fund.

The Council will not seek repayment if the service user is a victim of fraud.

Other conditions are set out in the Direct Payments Agreement (SS20), and if these conditions are not met we can also ask for Direct Payments money to be repaid.

Where a Suitable Person is responsible for managing the Direct Payments on behalf of the service user and they do not arrange the services as agreed or do not meet a condition properly within their role, the Council will seek repayment from them as the Suitable Person and not from the person who lacks capacity.

When the Council is considering recovering unspent funds, it will take into account any legal liabilities, such as a personal assistant's wages first, to make sure that these responsibilities can still be met.

Direct Payments do not form part of an estate in the event that someone dies while receiving them. The money at all times belongs to Devon County Council and remains public funds.

Planning for emergencies

The person receiving the Direct Payments should make sure that they have plans in place for when their usual arrangements do not work. For example, when their personal assistant is sick, does not turn up or goes on holiday. The Independent Living Advisers will help to plan for this type of situation. It is possible for a family member or friend to offer support when emergencies occur, or they could have a relationship with an agency which can support during these times.

If the emergency planning fails, it is the Council's responsibility to make sure that the service user receives the care and support agreed in their Support Plan. Service users should be aware that if this situation arises, they need to call the MyDevon Customer Service Centre on 0845 1551 007 and an adviser will contact the appropriate person to deal with their situation. The service user should contact the Council as soon as they realise they need help.

Regular Review

The Council are responsible for reviewing all service user's support care packages at regular intervals. The review procedure is the same for people who receive services from the Council and for people who receive Direct Payments.

Service users receiving Direct Payments will have at least one annual review which will look at how Direct Payments are working for them, the quality of the service they are getting, and will discuss if they have achieved the outcome they had wanted. The reviewer will also check the monitoring forms.

Service users should be encouraged to discuss any problems they are having managing their Direct Payments, without worrying that the Direct Payments may be stopped.

Some service users may need only light-touch reviews, perhaps conducted over the telephone. Others, particularly those whose circle of support is limited to a very few people, those who lack capacity to consent to Direct Payments, or those where there are relevant safeguarding issues, may be more isolated and vulnerable and will need more frequent, face-to-face reviews to prevent problems arising or early interventions to avoid escalation.

Questions to consider during support planning and at the review might include:

- what support networks does the person have in place?
- are there issues of social isolation or exclusion that might increase risk or make problems harder to identify?
- are family members and carers in agreement with the person's choices about their care and support? If not, what can be done to resolve disputes?
- is additional support required?
- would they benefit from further information, advice, peer support or independent advocacy?
- do they have particular communication requirements to be able to voice concerns?
- do they have the capacity to make their own decisions? If not, and if someone else is receiving the Direct Payments on their behalf, are there other people to provide support and make checks on the situation?
- Do they have fluctuating or deteriorating needs that need to be monitored?
- can their home environment be improved by means of specialist equipment or assistive technology?

What if the services user's circumstances change?

If a service users circumstances change in a way which could affect their Direct Payments they should contact the Direct Payments Team for advice.

If the service user is employing a personal assistant but wishes to change to

an agency they will need to tell us this so that we can make sure that they receive the correct amount of funding.

If the service user is using an agency but wishes to change to a personal assistant they will need to tell us this so that we can adjust payments and also make sure that the service user has the appropriate advice to ensure they employ a personal assistant legally and safely.

If a Suitable Person is managing the Direct Payments it is their responsibility to let us know if they believed that the service user's needs have changed.

Ending or suspending Direct Payments

Service users can ask to end the Direct Payments arrangement and have services provided by the Council at any time.

As part of the Direct Payments Agreement, service users agree to give four weeks notice when they wish to end the Direct Payments arrangement, however we do accept that it is sometimes not possible to do this. When a quicker solution is required we will make other arrangements to meet their needs.

If the Council believe that the Direct Payments are not being used as agreed, that the service user is no longer eligible, or that the service user is not meeting the conditions of the agreement, we will carry out a review and may end the Direct Payments. Payments will also end if the service user's needs change so that they are no longer eligible for social care services.

Direct Payments may also be suspended for a short time, for example if the service user goes into hospital or if their condition temporarily improves. We will discuss this with the service user and write to them about the change of circumstance.

We will take into account the service user's employment responsibilities for notice periods to be served for personal assistants. Once all responsibilities

are met any outstanding money must be returned to the Council. The service user will receive support to do this.

What happens if the service user goes into hospital?

If the service user goes into hospital they will still need to meet their responsibilities as an employer. They, or their Suitable Person, should let the Council know if this happens so that it can support them to pay their staff. The Council will continue to pay for an employed personal assistant for four weeks while the service user is in hospital. If the hospital stay is longer than four weeks, we will discuss with the service user whether we can fund Direct Payments for longer and pay a retainer. If we do not agree to pay the full Direct Payments amount, we can discuss paying a lesser amount so that staff can be retained. This must be agreed by the budget holding council officer.

What happens if a person dies while receiving Direct Payments?

When the Council are told that a service user receiving Direct Payments has died, we will make sure that their paperwork and funds are completed, for example, paying any money owed to personal assistants.

the Council has an internal process to make sure that Direct Payments accounts are closed correctly. Direct Payments will not form part of the estate of the service user and any money must be returned to Devon County Council. The person dealing with the service user's estate will receive support to ensure that the Direct Payments account is closed down and that all tasks are completed.

What happens if Direct Payments are not received?

If the service user or Suitable Person is not sure whether they have received their Direct Payments, they should check their bank account.

They will receive a system-generated information slip from Devon County Council once every four weeks, which tells them the payment we are making. If they do not receive the slip, they should check their bank account first. If they can see that their Direct Payments have not been paid into their account, they should contact the Direct Payments Team.

Direct Payments for equipment and assistive technology

Direct Payments cannot be used to purchase services or equipment which the Council is not responsible for, for example services that the NHS is required to provide. Direct Payments are also not a substitute for Disabled Facilities Grants.

Service users can use Direct Payments to buy their own assistive technology, such as pagers.

We appreciate that a one-off Direct Payment spent on the right piece of equipment can support independence and improve outcomes. This can be done if the Council are satisfied that the service user's eligible needs will be met by this arrangement. The service user will need to be supported by a specialist expert, such as an occupational therapist, who will ensure the equipment they choose is safe and appropriate.

Direct Payments for service users in residential care

People who live in care homes may receive Direct Payments in relation to non-residential services. For example, a service user could have Direct Payments to try out living independently before they move out of the care home, or they could receive Direct Payments to use daytime opportunities.

Direct Payments are intended to support independent living and, as such, cannot be used to pay for adults to live long term in residential care. They can be used to buy a short stay in residential care, if the stay does not exceed a period of four consecutive weeks in any 12 month period.

Moving into – or out of Devon

A service user receiving Direct Payments from another local authority and moving to live in Devon should contact the MyDevon Customer Service Centre on **0845 1551 007**. If they employ a personal assistant they will need to contact us as early as possible to start the Direct Payments process and ensure they meet their employer responsibilities by providing continuity of service.

Similarly a Devon service user moving to another local authority area will need to contact the new local authority to discuss their Direct Payments scheme and ensure continuity of service for their personal assistants.